

**House Energy & Commerce Committee
Subcommittee for Oversight and Investigation Hearings
“Thoroughbred Horse Racing Jockeys and Workers:
Examining On-Track Injury Insurance and Other Health and Welfare Issues”
November 17, 2005
Testimony Submitted by:
Christopher N. Scherf
Executive Vice President of the Thoroughbred Racing Associations of North America, Inc.**

Thank you, Mr. Chairman, and members of the subcommittee. I am gratified to have the opportunity to address the important and complex issues that have prompted your inquiry into the tragic circumstances involving Gary Birzer and his family.

As the Executive Vice President of the Thoroughbred Racing Associations of North America for the past 17 years, I have represented its member racetracks, currently numbering 41, in discussions with the Jockeys’ Guild and in securing a series of national insurance policies providing accident coverage across the broad spectrum of racetracks, encompassing TRA and non-TRA members, large and small alike. This program has been in place since the Guild first came to the TRA in 1949 to consolidate insurance from a variety of individual track policies into a national program assuring coverage the jockeys could count on no matter where they chose to ride. Jockeys then, as now, would move from state to state seeking to be retained by various racehorse owners. The insurance then available did not accommodate perfectly such mobile, individual sports professionals and insurance companies sometimes would dispute whether a claim was simply a continuing injury originally suffered at a different track with a different insurance carrier.

During the past 30-plus years, the Guild also has sought and received direct payments from the racetracks, using those funds to subsidize 65 to 75 percent of the cost of the family health plan offered to members of the Jockeys’ Guild. The Guild’s health plan included the

unusual provision of covering work-related injuries and provided reimbursement for medical costs in excess of the \$100,000 track accident policy. In 2001 when the health insurance became unaffordable even with \$2.2 million from the racetracks, the Guild's previous leadership allocated \$440,000 of that amount to purchase an excess accident policy.

I do not believe we would be here today if not for Dr. Wayne Gertmenian and his leadership of the Guild. In 2002, under Dr. Gertmenian's leadership, the Guild decided to discontinue the excess accident policy, which would have cost approximately \$490,000, and instead used the \$2.2 million in track contributions for unknown other purposes. The bottom line is the racetracks were providing base medical coverage and adequate direct financial support to provide for up to \$1 million in accident coverage, but Dr. Gertmenian and his management group diverted those dollars to other purposes.

The new management of the Guild, under Dr. Gertmenian, never exhibited concern or even understanding of the accident coverage. Through the years, the TRA and the Jockeys' Guild were listed as co-policy holders, along with the track actually purchasing the coverage. This entitled both organizations to important accident data.

The current policy, however, does not have the Guild as a policyholder because the broker was unable, despite repeated attempts, to get the Guild leadership to even sign the document.

In New York, New Jersey, Maryland, and California – where jockeys are covered by workers' compensation insurance purchased by horsemen – the tracks have purchased a complementary injury policy that provides lump sum payments to the jockey ranging from \$100,000 to almost \$1.5 million in the event of a catastrophic accident, either fatal or resulting in a total permanent disability, such as some form of plegia. The minimum payout is provided to

any jockey, but the much higher compensation is triggered if a jockey elects to provide the track with a waiver against suit. The Guild, through its then director John Giovanni, first proposed this additional benefit and the waiver provision in the late 1980s when New York, New Jersey, and Maryland brought jockeys under some type of workers' compensation fund. Under Mr. Giovanni and his Guild management's encouragement, 749 jockeys signed the waiver to assure themselves a benefit ranging from \$400,000 to \$1.5 million. Since Dr. Gertmenian took over the Guild, this option apparently has not been recommended by the Guild and only one waiver has been signed and received by TRA. . . in November of 2001. So much for current Guild management's abiding concern for member protection.

Another historical benefit was the Jockeys' Guild's Disabled Riders fund, which was started by John Giovanni to provide supplemental income to permanently disabled riders. Jockeys recovering from lesser injuries received weekly disability payments from the TRA-endorsed policy, which the Guild matched for its members as a form of "your dues dollars at work for you." When Dr. Gertmenian took over, the Guild began paying even temporarily sidelined jockeys from the Disabled Jockeys Fund, thereby diverting those dues dollars revenue to other purposes. This and a mysterious transfer of dollars out of the Fund is what quickly depleted the Disabled Riders Fund. On behalf of its member racetracks, the TRA requested, in 2003 and thereafter, an accounting of the use of their contributions to the Jockeys' Guild, but never has received a remotely adequate response from Dr. Gertmenian and his associates.

Regarding basic accident coverage and the relevant circumstances of working as a jockey in this country, here are the facts:

- Jockeys are independent contractors by choice, have been deemed to be so both legislatively and in some states by judicial ruling, and enjoy the concomitant tax

benefits, as affirmed by the IRS. As skilled, tough, and fiercely competitive individuals, jockeys want to be free to take riding assignments on a race-by-race basis so as to choose those mounts that offer the best chance of winning.

- Jockeys rode in races worth almost \$1.2 billion in purses in 2004. While jockeys are free to negotiate their compensation levels above state-regulated minimums, a generally accepted estimate of actual jockeys' earnings is 7.5 to 8.0 percent of his or her mounts earnings. Therefore, total jockeys earnings were between approximately \$88-\$94 million.
- There were 1,856 jockeys who rode in at least one race in 2004. There were 991 jockeys who rode at least 100 times, an average of two a week. Those jockeys accounted for more than 95% of all rides and this used to be the minimum requirement for active Jockeys' Guild membership and benefits. The average annual earnings for those jockeys was in the \$87,000-\$93,000 range. The 599 jockeys who rode at least 300 mounts (six a week and representing more than 80% of all starters), had average earnings of \$134,000-\$142,000.
- All equine activity – racing and non-racing, professional and amateur – is recognized as being inherently risky. People making a living riding horses usually have a passion for it, as evidenced by Gary Birzer's return to that activity in a recreational mode. At the same time, race riding is the best compensated riding profession available.
- In 2004, there were 487,416 starters. Through June 30, 2005, the latest loss report available, there were 708 paid claims by the TRA insurance policy. In recent years, the average claim has been about \$7,000. Through October 31,

2005, there have been five injuries that have reached the \$100,000 medical maximum. We don't know how much above that figure each person's medical expenses went, except for Gary Birzer.

- The salient fact is any lack of insurance coverage is a problem only in a very few specific instances. It is a problem that is solvable on both a short-term and long-term, comprehensive basis in a relatively quick fashion.

The TRA and its member racetracks have a long history of productive dialogue with the jockeys and the Guild. Jockeys are independent contractors, but the Jockeys' Guild has been an effective liaison with track management, representing riders in instances ranging from the riders deciding not to race for various weather or track surface-related safety issues on certain days (41 at TRA tracks during the past two years) to the jockey room environment, which can range from Spartan to game rooms and, at Monmouth Park, even a swimming pool.

In February of 2004, months before the Gary Birzer accident, the TRA formed a Safety Committee to constantly monitor and review jockey safety-related items and agreed to work in consultation with The Jockeys' Guild to promote the best and latest safety practices.

The TRA and its member racetracks have been supporters of the Racing Medication and Testing Consortium to promote a uniform and safe medication policy for horses that will ensure the safety of the horse and jockey. Horse and rider safety are why state racing commissions mandate pre-race veterinary inspection of each entrant.

The safer racing environment is the Holy Grail for the racing industry. Injuries to horses and jockeys are horrifying to our fans. Turfway Park spent \$5 million installing the revolutionary Polytrack surface and a new rail around it this year and the rest of the industry is anxiously

watching the encouraging early results to make sure the synthetic material will withstand the various extremes of climate and weather conditions.

Over the years, gooseneck rails constructed of materials designed to withstand the impact of a horse have replaced rails that shattered and had straight uprights as support. Distance-marking poles have been placed at a safe distance from the inside rail so as not to pose a danger to horse or jockey. Rider safety vests have been mandated as essential equipment not to be counted against the impost (weight) assigned to a horse.

Safety standards are an ever-evolving issue and, consequently, the TRA and its racetracks always have safety-related items on their business agenda.

Jockey health issues also are of continuing discussion and refinement within the industry. Unnoticed, but nonetheless true, a quick survey by the TRA revealed that during the past few years minimum jockey weight assignments have been raised in several major racing jurisdictions (California, Illinois, Kentucky, Maryland, New York, and New Jersey comprise an incomplete list) and are not the same as 100 years ago or even 10 years ago. It is a complex issue, however, that must also take into account the optimum safety of the horse.

Attesting to industry desire to have a healthy population of jockeys, the California racing industry solicited a proposal for a comprehensive study in August to utilize in developing a wellness program that will aid jockeys in maintaining a healthy lifestyle while meeting the rigorous physical demands of their profession. In September, the TRA and other industry groups met with the collegiate research team to refine the study so it can be undertaken in the coming year and become an industry benchmark for future policies.

Returning to the principal reason we're here today:

Is what has befallen Gary Birzer acceptable? Absolutely not.

What assurances can we give you that the racing industry is willing and able to rectify the situation in near-immediate fashion?

As I previously mentioned, the scope of the problem is far from insurmountable and the shrewd allocation of existing industry resources can provide an enduring, practical solution.

The NTRA Jockey Injury Task Force, which was comprised of racetracks, horsemen, and jockeys last winter, has put everyone on record as making adequate insurance coverage in the event of a catastrophic injury an industry imperative. I'm confident there is a cooperative solution that will be devised and implemented.

This Congressional subcommittee has been helpful in placing an increased focus on the task at hand. Furthermore, your work may help restore a long and valuable working relationship between the Jockeys' Guild, under a responsible new leadership, and other industry groups.

In any event, the tracks and horsemen understand the need for a secure safety net for all jockeys. It is well on its way to being erected as we speak and I have every confidence the job will be completed in the timely fashion it deserves and demands.